by the appellant company of its substantial holdings the respondent company, Mr. Jack Chia and the three other directors nominated by the appellant company resigned from the Board of the respondent company with effect after the meeting. At that meeting Mr. Jack Chia proposed a reallocation of the proportionate rent but no decision was taken. At the next Board meeting the Board of the respondent company decided not to accede to Mr. Jack Chia's proposal.

On April 23, 1981 the respondent company gave notice to the appellant company to vacate the Chairman's room and the Board room not later than May 31, 1981. On June 1, 1981 the respondent company locked the doors of the Board room thereby denying the appellant company access to it and on the same day gave "final notice" to vacate the Chairman's room. Following correspondence between the parties' solicitors an agreement was reached to maintain the *status quo* pending the outcome of the present proceedings.

We were of the opinion, on the undisputed facts, that the legal joint tenancy had been severed so as to create a tenancy in common. But tenancy in common resembles joint tenancy in matters depending on unity of possession. The occupation is undivided and neither co-tenant can claim a separate part save by obtaining partition (see 24 *Halsbury's* Laws of England, 1st edn. para. 396).

In the present proceedings, the appellant company sought an order for equal partition or for sale with equal division of the net proceeds of sale. In the Court below the application was dismissed but on appeal we ordered that the leasehold premises be sold with liberty to both parties to bid in such sale and that the net proceeds be divided equally. We were of the opinion that having regard to the differences between the parties and the fact that each has an equal right to all parts of the 7th Floor and neither may lawfully exclude the other from any part thereof, the *status quo* could not be maintained indefinitely and that it was necessary and expedient for the court to order a sale in the exercise of its power under paragraph 3 of the First Schedule to the Supreme Court of Judicature Act (Cap. 15) which reads:

"Additional Powers of the High Court

3. Power to direct a sale instead of partition in any action for partition of land, and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions".

For these reasons, we allowed the appeal.

Appeal allowed.

Solicitors: *Allen & Gledhill; Cooma Lau Loh & Karthigesu.*

LILY ISKANDAR & ANOR. v. BONARDY LEO & ORS.

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Thean JJ.) September 5, 1985]

[Singapore – Civil Appeal No. 21 of 1983]

Probate & Administration – Will – Granting of probate – Indonesian deceased with immovables and movables in Singapore – Pending suit in Indonesia regarding respondents' claim to a legitime portion – Question of probate adjourned until final determination – Whether High Court has jurisdiction to make grant of probate limited only to specific property – Probate and Administration Act (Cap. 23), s. 26.

Jurisdiction – Probate – Whether High Court has power to grant limited probate – Scope of Probate and Administration Act (Cap. 23), s. 26.

The deceased, Lugito, died in Indonesia on November 21, 1978 and at the date of his death was domiciled in Indonesia. He left behind eight children – three children by one Madam Wong, who were the respondents and five children by Lily Iskandar, the first appellant. The second appellant was one of the five children. Madam Wong, who predeceased the deceased, having died on May 8, 1976. The first appellant died on September 17, 1983.

Prior to his death the deceased on November 27, 1975 made a will in Singapore. Soon after the death of the deceased, proceedings were commenced in Indonesia by the first appellant and her children and also by the respondents. The matters in dispute reached the Supreme Court of Indonesia which gave its judgment in June 1981.

In Singapore the appellants on December 28, 1978 filed a petition praying for probate of the will in respect of the immovables and the movables in Singapore. The defendants opposed the granting of probate in respect of the movables.

This was an appeal against the decision of Chua J. who granted probate of the will to the appellants limited to the immovables and letters of administration *pendente lite* limited to the movables in Singapore to such person as the parties may agree and in default of agreement to such person as the Court may appoint and such person was to hold office for a specified period to be agreed between the parties and in default of agreement to be determined by court and the administrator so appointed was empowered to get in all

the movables in Singapore and institute any necessary inquiries for the purpose and to pay estate duty; and the question of probate in respect of the movables was adjourned until after the final determination in Indonesia of the application by the respondents (see [1983] 2 M.L.J. 96).

Held, dismissing the appeal: (1) the High Court has jurisdiction to make a grant of probate limited only to certain specific property. Under section 26 of the Probate and Administration Act (Cap. 23), depending on the will or the circumstances of the case, a probate of the will may be granted with certain property excepted therefrom and a further grant may be made subsequently in respect of such property;

(2) the learned Judge was fully justified in making the said order which was an interim measure intended to preserve the disputed property intact. It was eminently just and fair and there was no ground for disturbing it.

COURT OF APPEAL.

L.A.J. Smith for the appellants.

Jonathan Parker Q.C. (*Mrs. Ann Tan* with him) for the respondents.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): Lugito Surjo Kusno was a very wealthy Indonesian. He died in Indonesia on November 21, 1978 and at the date of his death was domiciled in Indonesia. He left behind eight children – three children by one Wong Tjow Moei ("Madam Wong"), who are the abovenamed respondents and five children by Lily Iskandar, the 1st appellant abovenamed and the 2nd appellant abovenamed is one of the five children. Madam Wong predeceased Lugito Surjo Kusno ("the deceased"); she died on May 8, 1976. The 1st appellant died on September 17, 1983 after the present proceedings had commenced.

Prior to his death, the deceased on November 27, 1975 made a will ("the will") in Singapore. The will was prepared by Mr. Lui Boon Poh, an advocate and solicitor, and was executed by the deceased and his execution was duly witnessed by Mr. Lui and his legal assistant Miss Ivy Neo Soh Bee, both of whom signed the same as witnesses. By the will the deceased appointed the appellants executors and trustees thereof and disposed of his whole estate, both movable and immovable, to the 1st appellant and her children to the entire exclusion of the respondents.

Soon after the death of the deceased, proceedings were commenced in Indonesia by the 1st appellant and her children and also by the respondents, and subsequently the issues were joined. A helpful summary of the various stages of the legal proceedings in Indonesia has been given by Chua J. in his judgment, and it is unnecessary for us to repeat them. Suffice here to say that the matters in dispute between them reached the Supreme Court of Indonesia which gave its judgment in June 1981.

In Singapore, the appellants on December 28, 1978 filed a petition praying for probate of the will in Probate No. 1474 of 1978. On January 18, 1979 the respondents filed a caveat against the grant of probate. Thereupon, on April 10, 1979 the appellants instituted the present proceedings against the respondents seeking for probate of the will. The claim was resisted by the respondents and their defence is briefly as follows:

(a) At the time of execution of the will the deceased was an Indonesian and was domiciled in Indonesia and at the date of his death he was still an Indonesian and domiciled in Indonesia. The will as executed by the deceased contravened the laws of Indonesia, being the country of his domicile, and was therefore invalid.

(b) The 1st appellant, an Indonesian was domiciled in Indonesia and was not lawfully married to the deceased in that, at the time the 1st appellant cohabited with the deceased, he was lawfully married to Madam Wong and the deceased could not lawfully marry the 1st appellant under Indonesian law. Consequently, under Indonesian law all the five children of the 1st appellant were not entitled to inherit any property of the deceased.

The appellants joined issued with the respondents.

It is not in dispute that under Indonesian law a legitimate or legitimated child of a deceased person is entitled to a specified portion of the deceased's estate as of right, notwithstanding any testamentary dispositions that may have been made by the deceased. In the instant case, however, under the laws of Singapore the immovable estate of the deceased in Singapore devolves according to the laws of Singapore but the movable estate of the deceased devolves according to the laws of Indonesia, being the *lex domicilli* of the deceased. Hence, if the respondents succeed in establishing their legitimacy under Indonesian law they would be entitled thereunder to one-quarter share each of the movable estate, notwithstanding that no provision was made for them in the will.

The case came on for hearing before Chua J. on April 13, 1981. As of that date proceedings were

well under way in the Indonesian Courts and at the hearing counsel for the appellants and respondents agreed on the following:

(a) The court should decide to what extent, if at all, the appellants should be granted probate of the will in respect of the immovable estate of the deceased in Singapore. This is a matter of Singapore law exclusively and it is for the court to decide on the evidence adduced.

(b) The court should adjourn the question of probate in respect of the movable estate of the deceased until after the final determination in Indonesia of the following questions:

(i) the validity of the will in Indonesia;

(ii) the status of the appellants and the respondents as lawful heirs of the deceased.

(c) The court should exercise its jurisdiction under section 20 of the Probate and Administration Act (Cap. 23) and make a grant of letters of administration *pendente lite* limited to movable estate in Singapore.

The learned Judge after hearing the evidence relating to the execution of the will held that the will had been proved and that the deceased, when he executed it, fully and completely understood the will, and made an order in the following terms:

(1) By consent the question of probate in respect of the movables be adjourned until after the final determination in Indonesia in relation to the validity of the will in Indonesia and the status of the appellants and the respondents as the lawful heirs of the deceased.

(2) Letters of administration *pendente lite* limited to the movables in Singapore be granted to such persons as the parties may agree or in default of agreement to such person as the court may appoint and that such person to hold office until the final determination of these proceedings and that the administrator so appointed be empowered to get in all the movables in Singapore and institute any necessary inquiries for that purpose and to pay estate duty.

(3) The immovables which fall under clause 7 of the will be treated as property to be dealt with by the administrator *pendente lite* who would be administrator of all movable and all immovables other than those devised and bequeathed in clauses 5 and 6 of the will.

(4) By consent the defence raised as regards clause 7 of the will be reserved until after the result of the Indonesian proceedings is known.

(5) Probate of the will limited to the immovables devised and bequeathed in clauses 5 and 6 of the will be granted to the appellants.

(6) The parties be at liberty to restore the case for further hearing after such determination in Indonesia.

In September 1982, the action was restored for further hearing before the learned Judge at the instance of the appellants on the ground that the Supreme Court of Indonesia had finally decided on the issues between the parties. At the hearing, which took place in September 1982 and also in February 1983, both sides adduced expert evidence on the Indonesian laws and on the effect of the decision of the Supreme Court of Indonesia. It was contended by the appellants that the Supreme Court of Indonesia had declared that the will was validly executed according to Indonesian law, rejected completely the claim by the respondents to be heirs of the deceased and declared that the appellants and the children of the deceased by the 1st appellant are the testamentary heirs of the deceased and entitled to all the property of the deceased. The respondents conceded that the Supreme Court of Indonesia had finally decided that the will was validly executed under Indonesian law and that the appellants are entitled to take under the will as testamentary heirs of the deceased, but contended that the issue as to the status of the respondents as lawful heirs of the deceased – whether they are the legitimate children of the deceased – had not been decided, and the legitimacy of the respondents has an important effect upon devolution of the movable estate of the deceased under Indonesian law. If the respondents establish their legitimacy they will be entitled as of right to one quarter share each of the deceased's movable estate, notwithstanding the terms of the will.

At the conclusion of the hearing, the learned Judge held that the Supreme Court of Indonesia had not effectively adjudicated on the issue of legitimacy of the respondents in the sense it was no longer open to them to establish it and claim the specified portion of the movable estate. Accordingly the respondents should be given an opportunity to establish their legitimacy and pursue such a claim. The learned Judge then made an order as follows:

(1) Letters of administration *pendente lite* limited

to the movables in Singapore be granted to such person as the parties may agree or in default of agreement to such person as the Court may appoint and such person to hold office for a specified period to be agreed between the parties and in default of such agreement to be determined by the court and the administrator so appointed be empowered to get in all the movables in Singapore and institute any necessary inquiries for that purpose and to pay estate duty.

(2) The question of probate in respect of the movables be adjourned until after the final determination in Indonesia of the application of the defendants for the specified portion.

(3) Such application or proceedings to be instituted in appropriate court in Indonesia within 1 month from July 11, 1983.

(4) Probate of the will in respect of all the immovables is granted to the plaintiffs.

(5) The parties be at liberty to apply and to restore the case for further hearing.

Against that judgment the appellants appealed and at the conclusion of the appeal, we dismissed it with costs.

Before us Mr. Smith on behalf of the appellants proceeded on only one ground of appeal, and it is this. The Supreme Court of Indonesia has held that the will was validly made according to the laws of Indonesia, and all that the High Court in Singapore should do is to give final judgment granting probate of the will in respect of all the properties of the deceased; the High Court has no jurisdiction to give a limited grant, *i.e.*, a grant limited to the immovables of the deceased. We were unable to accept this argument. First, the High Court has jurisdiction to make a grant of probate limited only to certain specific property. Under section 26 of the Probate and Administration Act (Cap. 23), a grant of probate or letters of administration may be made subject to such exception as the will or the circumstances of the case require, and in any such case a further grant may be made of the part of the estate so excepted. Therefore under that section, depending on the will or the circumstances of the case, a probate of the will may be granted with certain property excepted therefrom and a further grant may be made subsequently in respect of such property. This in effect is what the learned Judge had done in the instant case. He granted probate of the will to the appellants limited to the immovables and letters of administration *pendente lite* limited to the movables in Singapore to such person as the parties may agree and in default of agreement to such person as the Court may appoint and such person is to hold office for a specified period to be agreed between the parties and in default of agreement to be determined by court and the administrator so appointed is empowered to get in all the movables in Singapore and institute any necessary inquiries for the purpose and to pay estate duty; and the question of probate in respect of the movables was adjourned until after the final determination in Indonesia of the application by the respondents.

Secondly, we agree that in the circumstances of this case the learned Judge was fully justified in making the said order. On his analysis of the decisions of the Indonesian courts, which analysis was not disputed by the appellants and was accepted by the respondents as correct, he came to the conclusion that the Supreme Court of Indonesia had not finally adjudicated on the issue of legitimacy of the respondents in the sense that it was no longer open to them to prosecute and establish the claim that they are legitimate children of the deceased and are therefore entitled to the specified portion of the estate; they should be given an opportunity to do so and should do so with all despatch. While that claim is being pursued the *status quo* as regards the movables of the deceased should be preserved. In the interim the administration of the estate of the deceased to the extent of collection of the movables and payment of estate duty is not in any way impeded. Obviously, if probate of the will is granted without any exception, the 2nd appellant would be in a position to get in all the movables and distribute them according to the will. In this event the respondents would be left without any safeguard and should they succeed in establishing their legitimacy in Indonesia there would be no asset left to satisfy their claim to the entitlement; such a result would work grave injustice to the respondents. The order made by the learned Judge is an interim measure intended to preserve the disputed property intact; it is eminently just and fair and we see no ground, and certainly none has been made out, for disturbing it.

Appeal dismissed.

Solicitors: *L.A.J. Smith; Ann Tan & Associates.*